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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,718	10/17/2003	Jack D. Lemmon	M190.143.101	1756

7590 03/12/2007
Dicke, Billig & Czaja, PLLC
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EXAMINER

SNOW, BRUCE EDWARD

ART UNIT	PAPER NUMBER
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3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/688,718	Applicant(s) LEMMON, JACK D.	
	Examiner Bruce E. Snow	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/12/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 12-42 is/are pending in the application.
 4a) Of the above claim(s) 23,29 and 31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8, 12-19, 38 and 40-42 is/are allowed.
- 6) ☒ Claim(s) 20-22, 25-28 and 30 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's amendments and arguments filed 1/12/07 have been fully considered and have overcome the rejection second paragraph of 35 U.S.C. 112.

Regarding the rejection under 35 U.S.C. 103(a) as being unpatentable over Love et al (6,678,962) in view of Schoon et al (6,719,785), applicant argues that the two sizers are for different sizing procedures. The handle of Love et al can be attached in only two orientations and Love et al is silent regarding either. Both sizers of Schoon et al and Love et al are for measuring the aorta which is accessed in a preferred method as noted by applicant in col. 13, lines 46-67 of Schoon et al. The method of access dictates the handle orientation. It would have been obvious to one having ordinary skill in the art to attach the handle of Love et al in the claimed orientation as taught by Schoon et al when measuring the aorta. With this sound logical and the fact the handle can only be attached in two orientation, the Examiner can not find patentable novelty in applicant specifying one.

Allowable Subject Matter

Claims 1-8, 1-19, 38, and 40-42 allowed.

Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

Art Unit: 3738

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-22, 25-28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Love et al (6,678,962) in view of Schoon et al (6,719,785).

Love et al teaches:

20. (Currently Amended) A sizer assembly for evaluating a valve annulus to determine a size of a prosthetic heart valve to be sewn to the valve annulus during heart valve replacement surgery, the prosthetic heart valve including an annular extension having a first flexibility and a sewing ring having a second flexibility, the sizer assembly comprising:

a handle defining a first end and a second end (inherent, see handle socket 4);

and

a flexible sizer body coupled with the first end of the handle, the flexible sizer body including (regarding flexible, see 2:25-31):

an outer ring 1 (outer generally meaning not being in the center, towards the outside),

an annular wall 2 coupled to and extending from the outer ring, wherein the annular wall forms a plurality of extremities 2c configured to deflect inwardly;

wherein the extremities define a proximal side of the sizer body;

and further wherein the sizer assembly is characterized by the absence of leaflets connected to the extremities;

However, Love et al is not clear as to "wherein the handle extends proximally from the sizer body such that a longitudinal length between the extremities and the second end is less than a longitudinal length between the outer ring and the second end." Schoon et al teaches a similar sizer wherein the handle attaches in the direction as claimed; see figure 2. It would have been obvious to one having ordinary skill in the art to attach the handle of Love et al in the claimed orientation as taught by Schoon et al when measuring the aorta.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

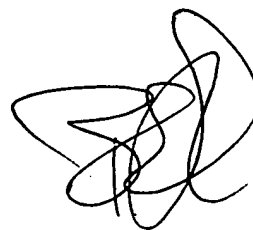
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E. Snow whose telephone number is (571) 272-4759. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to be 'Bruce Snow', written in a stylized, cursive-like font.

BRUCE SNOW
PRIMARY EXAMINER